IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 336 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SHANTARAM MURLIDHAR PAVAR

Appearance:

MR KP RAVAL, ADDL. PUBLIC PROSECUTOR for Petitioner

MR SV BACHANI for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 09/05/2000

ORAL JUDGEMENT

1. This is a revision application u/s 397 read with section 401 of the Criminal Procedure Code, at the instance of the State of Gujarat through the Deputy Conservator of Forest, South Dang Division, Ahwa, challenging the judgement and order of the District &

Sessions Court, Valsad at Navsari in Criminal Appeal No.40/98.

2. From the record, it appears that on 25th August 1998, the Deputy Conservator of Forest passed an order of confiscation of truck bearing registration No. GTT-4242 belonging to the first opponent herein on the ground that it was engaged in the commission of a forest offence namely, transportation of teak wood, without legal pass or permit.

2.1 The first opponent herein thereupon preferred an appeal against the said order, wherein the order of confiscation was converted into an order of penalty of Rs.25,000/-. Against the said order, both parties preferred Special Criminal Application in the High Court, and this Court after hearing both the matters, remanded the matter back to the Deputy Conservator of Forest for afresh hearing in accordance with the directions given.

2.2 After remand, Deputy Conservator of Forest once again passed a fresh order of confiscation in respect of the same truck, against which the first opponent herein again preferred Criminal Appeal No.40/98 before the Sessions Court, Valsad at Navsari. The Sessions Court in appeal, after hearing and deciding the same on merits, came to the conclusion that looking to the value of the teak wood being illegally transported, and looking to the value of the truck at the time of commission of the offence, to permit the entire order of confiscation to stand would be unreasonable, and would amount to travesty of justice. It was for this reason the Sessions Court interfered with the order of confiscation and directed that the truck in question to be released in favour of the first opponent herein, on his paying a penalty of Rs.25,000/- within a stipulated period.

3. The short issue in the present revision is as to whether the order of the learned Sessions Judge is justified on the facts and circumstances of the case, or whether the order of confiscation in its entirety is justified.

4. This Court cannot overlook the discretionary jurisdiction which has been exercised u/s 397 read with section 401 of the Criminal Procedure Code, and the limits and parameters of such jurisdiction. This jurisdiction is to be exercised only in the interest of justice, and that too for rendering substantial justice to the parties. The fact that the owner of the truck had committed a forest offence is not in dispute and

undisputable. The only question is whether the entire truck should be confiscated or whether a substantial fine in lieu of confiscation would meet the ends of justice. In this limited context, learned counsel for the present applicant submitted that a fine of at least Rs.50,000/ought to be imposed.

5. On the facts and circumstances of the case, I am satisfied that there absolutely no material or data on the basis of which, value of the truck can be ascertained even approximately on the date of the offence. It would therefore in my opinion be neither rational nor reasonable to accept any figure whatsoever, or even an approximate estimate, in this regard.

5.1 However, looking to the facts and circumstances which does appear that the fine in lieu of the order of confiscation as imposed by the learned Sessions Judge appears to be on the lower side. The object of fine, even if the same is levied in lieu of the order of confiscation, is to ensure that the same serves as a deterrent and would preclude the owner from indulging any such offence again. I am therefore of the opinion that the fine of Rs.40,000/- in lieu of the order of confiscation would meet the ends of justice. It is therefore directed that if the first opponent herein pays a fine of Rs.40,000/- within two months from today, the order of confiscation in respect of the truck bearing registration No. GTT-4242 shall stand revoked, failing which the order shall stand. The judgement and order of the District & Sessions Court is accordingly modified. It is clarified that if the fine is paid, the custody and possession of the truck in question shall be handed over to the first opponent herein after appropriate identification. It is clarified that if the opponent No.1 has paid or deposited the amount of penalty quantified at Rs.25,000/- as per the earlier order of the Sessions Court, the same shall be given a set off against the fine of Rs.40,000/- imposed herein.

6. This revision application is accordingly allowed to the aforesaid extend. Rule is accordingly made partly absolute.

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